

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1028 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF GULABBHAI L. RANA UMIYABEN G RANA

Versus

GULABDAS KALYANDAS RANA

Appearance:

MR HB SHAH for Petitioners

MR D.J.Bhatt for Mr. HG PATIL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. The petitioners are the heirs of Gulabbhai Lallubhai Rana against whom the respondent had filed a suit being Regular Civil Suit No.123 of 1971 in the court of the learned Civil Judge (JD) at Gandevi. The case of the plaintiff in the said suit was that the plaintiff is the

owner of the suit property viz. Kalyan Vihar situated in ward no.7 in Billimora town. The description of the property is given in para 1 of the plaint. The suit premises was let out by the plaintiff to the defendant at a monthly rent of Rs. 13/-. That from 1.9.1961, the defendant failed to pay the said rent. The plaintiff therefore, served the defendant with a notice dated 6.6.1966 through his advocate and the same was served on the defendant on 7.6.1966. In spite of the same, the defendant did not comply with the same and gave evasive reply to the notice. According to the plaintiff, the defendant also made certain changes in the premises let out to him without the consent of the landlord. Ultimately therefore, the rent was demanded from the defendant amounting to Rs.1547/- which the defendant failed to pay and ultimately a suit was filed by the plaintiff for getting a decree for possession on the ground of arrears of rent.

#. The defendant appeared in the suit and filed his written statement at exh.12. He has denied that the plaintiff is the owner of the suit premises. It was stated by the defendant that he is the owner of the suit premises and he is not a tenant. It is further the case of the defendant that Lallubhai Parsottam was his father and manager and Karta of the joint Hindu family. He was doing the business of rice etc. and as a karta of the family he was managing the business. On 8.9.1942, said Lallubhai had purchased land bearing survey number 467 of Billimora in his capacity as manager and Karta. Said land was purchased for Rs. 18,000/- by a registered sale deed which was in the benefit of the joint family and immediately after the purchase of the same, a part of the land was sold to one Ranchhodbhai Hargovandas and on the remaining portion, two buildings were constructed by him well equipped with latrine etc. out of the funds of the said HUF. The construction work was over by about 1943 which costs about Rs.65000/-. Thus the said property was owned, possessed and occupied by the said HUF. Thereafter, the part of the open land admeasuring 285' x 49' was leased by the said manager to one Shri Fakirbhai Jinabhai and Co. and since then he is their tenant. It is also the case of the defendant that the said family business was terminated at the end of the year 1943 and on lapse of one year thereafter the said Lallubhai Parshottambhai, his father had started completely new and fresh business at Ashagadh of the erstwhile State of Jawaharnagar. This was his independent and exclusive business with which neither the said HUF nor any of its member had any concern. Thereafter, his said father had mortgaged the said HUF property on 7.4.1945 to one

Lallubhai on accepting the mortgaged amount of Rs. 20,000/- which debt was created for the said new business at Ashagadh and again, neither the said HUF nor any of his member had any concern with the said debt. On or about 17.12.1945 his father Shri Lallubhai Parshottambhai accepted the plaintiff as well as one Shri Jashbhai Chhotabhai and one Shri Lallubhai Gordhanbhai as the partners in the said new Ashagadh business which was run in the name and style as Rana Bros. and again neither the said HUF nor any of its members had any connection or concern with the said business. Ultimately on 14.10.1946 his father Shri Lallubhai Parshottambhai expired. The defendant has then advanced his theory that the suit sale deed exh.68 dated 9.1.1957 is a sham one. It is further contended by the defendant that the plaintiff's father Shri Kalyandas Vithaldas under extreme fraud, pressure, and coercion etc. had obtained mortgaged deed in favour of one Shri Gordhanbhai for the mortgaged debt of Rs.30,000/- from the heirs of the deceased Lallubhai Parshottamdas. The defendant and his brother etc. under the misrepresentation stated that there was heavy loss in that business. Hence the said deceased Lallubhai Parshottamdas was heavily indebted to the rest of the partners well as other persons. Thereafter the plaintiff's father Shri Kalyandas Vithaldas had obtained decree in respect of both these mortgaged documents, which were not binding to them. It is also the case of the defendant that the plaintiff's said father expired during about 1956, after whose death the plaintiff had met the defendant and his brother and has misrepresented that his deceased father Shri Lallubhai Parshottambhai were heavily indebted at Ashagadh and if the whole suit premises is not transferred in his the name of plaintiff, then the same will be sold out for the purpose of satisfaction of the said debt through the court. He further misrepresented that the said Lallubhai Parshottamdas was indebted heavily to him also, but if the defendant and his brother pay Rs. 20000/- to him, then in that event he would relieve them from all such debt and liabilities and moreover, he will satisfy the mortgage by payment from the Ashagadh property of partnership business. Initially, the defendant had not accepted this offer of the plaintiff but ultimately, it was unanimously decided between the plaintiff, the defendant and his brothers that the defendant to satisfy all the above stated mortgage decree accordingly and sham sale deed to be executed by the defendant and his brothers etc. in favour of the plaintiff without actual consideration of Rs. 52,999/- and not to virtually act upon but just with a view to save the said HUF property from the said debts of deceased Shri Lallubhai

Parshottamdas. It was also agreed to pay Rs. 7000/- to the plaintiff by the defendant and his brothers which was actually paid by him. Accordingly, a sham document exh.68 dated 9.1.1975 was executed by the defendant, his brother, etc. In fact, the value of the said property was worth Rs. 1,65,000/- and that being so the consideration amount of Rs. 52,999/- of the sale deed is grossly inadequate. It is also the further case of the defendant with regard to his defence theory of sham document that after the suit sale-deed exh.68, dated 1.9.1957 was executed, the plaintiff had misrepresented before him that till the said debt of deceased Lallubhai Parshotambhai becomes time barred, the documentary evidence is required to be arranged to save the said HUF property from the said debts and with that view only, the defendant had got executed the rent notes in favour of the plaintiff from the tenants in the said HUF property as well as for the said purpose, he himself had also executed the suit rent note exh.72 dated 1.8.1957. It is thus the case of the defendant that the suit sale deed exh.68 is a sham document, the plaintiff never was and is the owner of the suit premises. On the contrary he himself along with his brother etc. as heirs, the said deceased Lallubhai Parshottambhai are the owners of the said ancestral property and there had never been any question of lease in the suit premises by the plaintiff to him. That being so, there is no question at all of payment of rent to him by the plaintiff. It was therefore, contended that the plaintiff is not the owner of the suit property and therefore, he is not entitled to any relief. In the alternative it was contended by the defendant and his joint family is the owner of the suit property by adverse possession. It was also prayed that the suit was required to be dismissed.

#. The learned Trial Judge framed various issues at exh.17. After recording the evidence and hearing the arguments of both the sides the learned Trial Judge came to the conclusion that the defendant is a tenant in arrears of rent for a period of more than 6 months and as he has failed to pay up the rent within one month in spite of receipt of the notice. Ultimately therefore, on the ground of arrears of rent, the Trial Court by its judgment and order dated 26.9.1980 passed a decree for possession. Aforesaid judgment and decree of the Trial Court was carried in appeal by the defendant by filing Regular Civil Appeal No.78 of 1980. During the pendency of the appeal before the District Court, the original defendant died and his heirs and legal representatives were brought on record. The learned Assistant Judge,

Valsad who heard the said appeal, ultimately dismissed the said appeal by his judgment dated 30.4.1983. Said judgment and decree passed by the lower appellate court has been challenged in the present Revision Application.

#. I have heard Mr. H.B.Shah learned advocate for the petitioner.

#. There are certain facts which are required to be discussed and which are not in dispute. The son of defendant's brother one Kanubhai had filed a Regular Civil Suit No. 153 of 1972 in the court of the learned Civil Judge(JD) at Gandevi which was a suit for partition where the defendant and other family members were also joined as parties. The judgment of the aforesaid suit which was dismissed is at exh.135 on record and the decree was confirmed in Second Appeal by the High Court. The learned appellate Judge therefore, came to the conclusion that there is no substance in the defence of the defendant regarding plea of HUF. The main question therefore, remains as to whether the defendant was in arrears of rent or not. The landlord had given a notice demanding rent but the defendant-tenant did not comply with the said notice. The learned appellate Judge has considered the claim of arrears of rent of less than 3 years before the filing of the suit though it is found from the evidence on record that the defendant was in arrears of rent for more than 6 months since 1961 and he failed to pay the rent inspite of receiving the demand notice. The case therefore, squarely falls under section 12(3)(a) of the Bombay Rent Act. In spite of valid demand notice, the defendant did not pay the rent. Therefore, the case will squarely fall within the provision of section 12(3)(a) of the Bombay Rent Act in view of the decision of the Supreme Court reported in 31(1) GLR 209 Under the circumstances the court has no option but to pass a decree under section 12(3)(a) of the Bombay Rent Act. The appellate court has come to the conclusion that as there is no dispute of standard rent the case would fall under section 12(3)(a) of the Bombay Rent Act. Even otherwise, the petitioner tenant has not paid the rent even on the first date of hearing nor has he deposited the rent regularly during the pendency of the suit, and therefore, he is not entitled to the protection under section 12(3)(b) of the Bombay Rent Act also. In that view of the matter there is no substance in the present revision application. Therefore, the revision application requires to be dismissed and accordingly the same is dismissed. Rule is discharged with no order as to costs.

At this stage Mr. H.B.Shah learned advocate for the petitioner has requested that some time may be granted for vacating the suit premises. Looking to the fact that the petitioners are occupying the premises since long, in the interest of justice I grant 6 months' time for vacating the suit premises. The decree for possession shall not be enforced till 31.7.2000.

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